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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

J.C.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN
COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF
HUMAN SERVICES,

Real Party in Interest.

F060615

(Super. Ct. No. JD122462-00)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Peter A. Warmerdam, Referee.

J.C., in pro. per., for Petitioner.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Judith M. Denny, Deputy County Counsel, for Real Party in Interest.

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*Before Wiseman, Acting P.J., Gomes, J., and Dawson, J.

Petitioner in propria persona seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from respondent court's orders issued at a contested six-month review hearing terminating reunification services and setting a Welfare and Institutions Code section 366.26¹ hearing as to his son, R. We will deny the petition.

STATEMENT OF THE CASE AND FACTS

In October 2009, the Kern County Department of Human Services (department) detained newborn R. at the hospital after he and his mother, Mary, petitioner's live-in girlfriend, tested positive for methamphetamine. Petitioner and Mary admitted using drugs, although petitioner claimed he had not used drugs since May 2008. He denied knowing that Mary was using drugs while pregnant. He also denied having any disabilities.

The department filed a dependency petition alleging petitioner and Mary's drug use placed R. at risk of harm. The department subsequently filed an amended petition adding allegations petitioner and Mary were involved in a domestic violence dispute in September 2009. They were both criminally charged with battery.

On October 28, 2009, the juvenile court conducted the detention hearing and ordered R. detained. On that same day, the social worker met with petitioner and Mary and advised them the department wanted them to enroll and complete counseling in parenting, child neglect and substance abuse and submit to random drug testing. They both reviewed and signed their case plans.

In January 2010, the juvenile court exercised its dependency jurisdiction and ordered petitioner and Mary to participate in counseling for child neglect, parenting, domestic violence and substance abuse. They were also ordered to submit to random

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

drug testing and visit R. twice weekly under departmental supervision. The juvenile court advised both parents it could set a section 366.26 hearing if R. could not be returned to their physical custody by the six-month review hearing, which the court set for July 2010.

According to the department in its report for the six-month review hearing, the social worker reviewed petitioner's case plan with him in January 2010 and monthly thereafter. However, he waited until mid-May 2010 to enroll in substance abuse treatment. At that time, he entered a sober living facility where he reportedly was attending meetings daily, complying with all aspects of his program and getting along with the other residents. In mid-June 2010, he enrolled in a 20-week parenting/neglect counseling program and a 52-week domestic violence counseling program. In addition, petitioner failed to drug test on many occasions, resulting in presumptive positive test results. He also failed to show up for 20 visits. Mary was even less compliant. She had not enrolled in any of her counseling programs, continued to test positive for methamphetamine and was not regularly visiting R. Given their noncompliance, the department recommended the juvenile court terminate their reunification services and set a section 366.26 hearing to implement a permanent plan for R.

In July 2010, on the date set for the six-month review hearing, the juvenile court set a contested hearing at the request of petitioner's attorney. On July 23, 2010, the juvenile court conducted the contested hearing. Petitioner appeared represented by counsel. Mary did not personally appear. Petitioner's attorney presented argument only. He advised the court petitioner continued to participate in his services and that, with the exception of domestic violence counseling, petitioner would be able to complete his services within another six months. He also pointed out that petitioner had not missed any scheduled visits since the last court hearing. He acknowledged petitioner's late start but asked the court to extend reunification.

County counsel informed the court petitioner missed another drug test on July 1 and argued the court should terminate reunification services based on petitioner's lack of progress and late start. Minor's counsel submitted on the department's recommendation.

At the conclusion of the hearing, the juvenile court found petitioner made minimal progress and minimally availed himself of the services offered. The court further found petitioner failed to regularly participate in and make substantive progress in his court-ordered services and there was not a substantial probability R. could be returned to his custody within the ensuing six months. The court terminated petitioner and Mary's reunification services and set a section 366.26 hearing. This petition ensued.²

DISCUSSION

Petitioner claimed he had a learning disability which prevented him from understanding that he was to participate in his services simultaneously. He was under the impression, he further claims, that he was supposed to complete one class at a time. He faults his attorney for his misunderstanding. Had trial counsel taken the time to explain the requirements of his case plan in "simple [E]nglish instead of using formal codes," he contends, he would have fully complied. He informs this court that he continues to participate in his services and visit R. If given the chance, he asserts, he will follow the requirements of his services plan.

Absent evidence to the contrary, the law presumes a parent has the capacity to comply with an appropriate case plan. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 415.) In this case, there is no evidence that petitioner suffers from a learning disability and he expressly denied having any disabilities. Further, even if petitioner has a learning disability, it apparently did not prevent him from participating in and advancing in his services. We refer to evidence in the record that petitioner consistently attended and

² Mary did not file a writ petition.

actively participated in neglect/parenting counseling, cooperated and demonstrated a positive attitude in domestic violence counseling and fully participated in his activities at the sober living facility. In addition, the petition itself bolsters our impression that any learning disability was not prohibitive. Petitioner claims continuing success in his services without any mention of special accommodations.

Further, there is no evidence petitioner believed he had to complete one class before beginning another. On the contrary, the record reflects petitioner enrolled in two separate counseling programs, parenting/neglect and domestic violence, in mid-June 2010. Consequently, the evidence simply does not support petitioner's claim to have misunderstood what the juvenile court required of him.

Finally, on appeal, petitioner bears the burden of demonstrating error. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.) Here, petitioner fails to show how the juvenile court erred in terminating his reunification services at the six-month review hearing. Accordingly, we will deny the petition.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.